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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

THE CITIZENS BANK AND TRUST COMPANY OF BLOOMINGTON, INDIANA, Administrator d.b.n. of the Estate of JOSEPH KELLY KERR, Deceased,
Petitioner,

v.

THE UNITED STATES OF AMERICA, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

REPLY BRIEF FOR PETITIONER TO OPPOSITION

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This Reply Brief is believed necessary because of unexpected conflict between the Petition and the Opposition as to the relief available to a judgment creditor

of the United States, whose final judgment for the recovery of money from the United States is outstanding and partially unpaid because of wrongful withholding of its proceeds, contrary to mandatory administrative procedure for ministerial payment and satisfaction of such judgment.[1]

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[1] The Opposition, (p. 6), states Congress has provided, in 28 U.S.C. 2414, specific procedure for the payment of judgments rendered in the district courts against the United States, and, in 31 U.S.C. 227, for judicial determination and setoff thereby of debts owed by its judgment creditor to the United States as against its judgment debt to the judgment creditor.

For 28 U.S.C. 2414 and 31 U.S.C. 227, see Petition-Appendix, A, pp. 2a-3a, and for their application see *Richmond, F. & P. R. Co. v. McCarl*, 63 F. 2d 293 (App. D.C.) and *Hines* v. *United States*, 105 F. 2d 85 (App. D.C.).

The basic administrative ministerial duty of obedient performance of the provisions of a duly allowed judgment for the recovery of money from the United States, is the ruling of this Court, in *United States* v. *O'Grady*, 89 U.S. (22 Wall.) 641, 647; quoted in *Hines* v. *United States*, *supra*, as follows:

> Judicial jurisdiction implies the power to hear and determine a cause and, inasmuch as the Constitution does not contemplate that there shall be more than one Supreme Court, it is quite clear that Congress cannot subject the judgments of the Supreme Court to the re-examination and revision of any other tribunal or any other department of the Government.

The allowed final judgment automatically effects its forthwith payment, unless there is established, or in the course of being established, an available setoff of contra indebtedness to the United States, or unless there is wrongful withholding of payment of some amount of the judgment. When the original judgment is judicially examined and the withholding is made recoverable by a new judgment therefor, final allowance of such new judgment effects automatic payment of the withholding. Thus, the new judgment in the District Court, as in the Court of Claims is automatically the end of the matter.

Material conflict is whether such relief, as claimed in the Petition, (pp. 2-3), is further judicial order in the same court for recovery of the unpaid balance, or, as claimed in the Opposition, (p. 2), is mandatory proceeding, for performance of 31 U.S.C. 227, (Pet. App. A, p 2a), by the recalcitrant officials.

The judgment for petitioner, now partially unpaid, was entered, pursuant to mandate of this Court, on June 30, 1942, in the District Court below, in prior litigation between the parties as to the liability of the United States to petitioner upon a war-risk insurance contract. It provided forthwith recovery from the United States of $8,227.50, payable as $822.75 to the attorney of petitioner as his fee, and as $7,404.75 to petitioner as the judgment balance. The judgment was allowed as final for its administrative payment on March 7, 1943, subject to its settlement by the General Accounting Office, as to the payments there upon to be made by the Comptroller General, pursuant to 31 U.S.C. 227, from the appropriated funds awarded by the Veterans Administrator as available for such payments. The duty of the Comptroller General was forthwith to pay the judgment, according to its provisions, if there was no indebtedness, in any manner, of the judgment creditor to the United States, or, otherwise, if there was such indebtedness and the parties did not agreeably settle their creditor-debtor relation, by necessary use of the proceeds of the judgment against the United States, he was to withhold sufficient of its judgment proceeds to protect the United States, and cause the institution and prosecution to final judgment of action by the United States against its judgment creditor for recovery of the indebtedness, thereupon to be set off against the creditor judgment, pro-

vided, if the final recovery of the indebtedness was less than the withholding, the Comptroller was to refund the excess with interest to the judgment creditor. The record, in the prior litigation, establishes forthwith payment administratively of the $822.75 attorney fee, but not of the $7,404.75 judgment balance to petitioner.

Alleging the foregoing matters, in a complaint for relief from the withholding, filed in the District Court below, on December 4, 1954, petitioner further alleged the wrongful withholding of the $7,404.75 judgment balance by the United States; and also that petitioner never was indebted in any manner to the United States. That the judgment balance is unpaid to petitioner is admitted by the Opposition, (p. 3).

The District Court below dismissed the complaint of petitioner as barred of remedy and from prosecution by the District *lex-fori* statute of limitations. Upon the appeal of petitioner from said dismissal, the appellate Court below, putting aside categorically all contentions, shortly affirmed the dismissal below, but upon the different and sole ground of *res adjudicata*, by holding the complaint presented no new issue and no more than an issue previously decided by the prior judgment.[2]

In support of its position that the way to payment of the outstanding judgment balance is a further and new judgment in and by the District Court against the United States for the outstanding judgment balance, the Petition presents the appellate dismissal below of the complaint, as direct and material conflict with de-

[2] See the appellate opinion in Petition-Appendix B, pp. 4a-7a, also quotation from the opinion in Petition pp. 5, 6.

cisions of this Court and of the Court of Claims, as involving important federal questions, and as denial of simple and expeditious relief.[3]

The Opposition meets the issues of the Petition only by posure of other issues,—whether the District Court lacked jurisdiction of the complaint that discloses it was filed more than six years and more than twelve years after the entry of the $8,227.50 judgment, also, whether the United States consented to be sued, and, also, whether sufficient claim for relief is stated in a complaint upon a judgment against the United States, that raises no question not already concluded by the prior judgment.[4]

The substance of the Opposition is that the way of relief, where there is administrative disregard of provided administrative procedure for the satisfaction of a money judgment against the United States, is mandatory proceeding against the recalcitrant officials. Such position is submitted too broadly taken in this proceeding wherein this Court confines its consideration to discussion of the matter relied upon as ground for its intervention by certiorari.[5]

The position taken in the Opposition conflicts materially with settled precedents. The appellate decision is here in issue and is therefore not a precedent for the Opposition position.

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[3] See Petition, Question, p. 2-3, Reasons, pp. 7-12.

[4] See Opposition, Questions, p. 2, Argument, pp. 3-7.

[5] *Alice State Bank* v. *Houston Products Co.*, 247 U.S. 240, 242.
Hubbard v. *Todd*, 171 U.S. 474, 494.
Southport Petr. Co. v. *National L. Rel. Bd.*, 315 U.S. 100, 102.

A cause of action upon a judgment is different from that upon which the judgment was entered.[6]

"The jurisdiction of a court is not exhausted by the rendition of its judgment, but continues until that judgment shall be satisfied. Many questions arise on the process subsequent to the judgment, to which jurisdiction is to be exercised."[7]

Judicial recourse, consisting of a new judgment, is upheld in decisions of this Court and of the Court of Claims.[8]

The Court of Claims has explicitly rejected claim that 31 U.S.C. 227 bars other relief to the judgment creditor against wrongful withholding.[9]

Other contentions made in the Opposition, as to the right to be sued resulting from sovereign consent, and as to limitations, require comment.

There is admitted consent of the United States to be sued herein for claimant recovery of a judgment for the payment of money, thereupon allowable as a final

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[6] *Milwaukee County* v. *White Co.*, 206 U.S. 268, 265.

[7] *Wayman* v. *Southard*, 10 Wheat. 1, 23.

[8] *United States* v. *O'Grady*, 89 U.S. (22 Wall.) 641, 647.
Benedict v. *United States*, 66 Ct. Cls. 437.
Helvetia Milk Cond. Co. v. *United States*, 77 Ct. Cls. 743, Cert. denied, 290 U.S. 671.

[9] *Eastport S.S. Co.* v. *United States*, 131 Ct. Cls. 210, 130 F. Supp. 333, (quoted in Petition, p. 10.) Idem, 140 F. Supp. 773, 775; Ct. Cls.

Additional opinion: Plaintiff should not be compelled to resort to another forum to collect a judgment obtained in this court. It has the right to come here and show that the judgment was wrongfully withheld.

judgment requiring its ministerial administrative payment and satisfaction. Consequently, grant of a new claimant judgment, expressive of relief intended in but not effected by the original judgment, is but continuation of the original action, as no more that a bill of review answerable by the United States, or than a scire facias proceeding; and each is allowable by the initial consent to be sued and each is not subject to limitations.[10]

For cause shown in the Petition and herein, grant of the writ of certiorari as prayed by Petitioner is submitted to be a proper exercise of discretion.

Respectfully submitted,

CAMDEN R. MCATEE
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August 30, 1957.

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[10] Note 7, *supra*.